Supreme Court, U. S.
FILED
OCT 15 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-625

UNITED STATES OF AMERICA, Plaintiff,

V.

429.83 ACRES OF LAND, MORE OR LESS, SITUATE IN IBERIA PARISH, STATE OF LOUISIANA, AND MORTON-NORWICH PRODUCTS, INC., ET AL, AND UNKNOWN OWNERS, Defendants,

C. PATOUT BURGUIERES Petitioner,

V.

MORTON-NORWICH PRODUCTS, INC., SHELL OIL COMPANY, AND BENJAMIN MINERALS, INC., ET AL., Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

C. PATOUT BURGUIERES
IN PROPER PERSON
1553 CALHOUN STREET
NEW ORLEANS, LOUISIANA, 70118
(504) 897-0420

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, C. Patout Burguieres, respectfully asks that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of

Appeals, Fifth Circuit, entered in this proceeding on July 24, 1979.

OPINION BELOW

The Federal District Court gave no opinion.

The following from the Federal District Court are attached in Appendix A:

(1) Minute Entry, filed September 12, 1978, (A-1);

(2) Judgment entered September 7, 1978, not reported, (A-3);

(3) The Ruling on Motion denying C. Patout Burguieres' motions, entered October 5, 1978, not reported, (A-8);

(4) Amended Judgment, entered October 5, 1978, not reported, (A-14);

(5) The Order that all Motion by C. Patout Burguieres be denied, entered October 5, 1978, (A-19);

(6) The Motion and Order by Morton-Norwich Products, Inc., Shell Oil Company,

and Benjamin Minerals, Inc., Et Al., that the Summary Judgment entered on September 27, 1978, as amended by Amended Judgment entered on October 5, 1978, be modified to dismiss J. M. Burguieres Company, Ltd. from this action, etc., entered December 13, 1978, not reported, (A-22).

The above is from Civil Action No. 771149, Federal District Court, Lafayette Division, Western District, Louisiana.

It appears the Federal District Court judged against C. Patout Burguieres and found him for costs, (A-17, 18).

The Judgment and Opinion of the Federal Court of Appeals, Fifth Circuit, is all one paper. Said Judgment and Opinion are listed under No. 78-3646 SUMMARY CALENDAR, was entered July 24, 1979, not reported, (A-29). The Court of Appeals affirmed the judgment of the District Court.

JURISDICTION

The Judgment of the Federal Court of Appeals, Fifth Circuit, was entered on July 24, 1979, and this petition for Writ of Certiorari was filed within ninety days of that date. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254.

QUESTIONS PRESENTED

In condemnation proceedings, can C. Patout Burguieres be deprived of his personal property without due process of law and without paying him just compensation?

When the Federal District Court in this proceeding issued a judgment but did not issue an opinion, isn't this failure to issue an opinion a violation of due process of law?

When the Federal Court of Appeals, in a single paper, affirmed the judgment of the District Court, and gave an opinion

based on township surveys which were objected to because they were introduced untimely and without proper notice, isn't this agaist due process of law?

Can the Federal Court of Appeals affirm a judgment of the Federal District Court when said judgment was issued without due process of law?

Can the Federal Government caption its condemnation proceedings showing the lands seized to be located in Iberia Parish when the land seized is located in St. Mary Parish under Federal Rules of Civil Procedure 71A (c)(1) caption, (A-38) and Article 2251 of the Louisiana Civil Code which requires that original conveyances be deposited into the records of the Parish where the land is located as notice to third parties?

Can the Court of Appeals lawfully deny motions requesting signed opinion?

CONSTITUTIONAL PROVISIONS AND FEDERAL RULES INVOLVED

The Fifth Amendment to the United States Constitution and Rules 56(b), 56(c), and 71A(c)(1) of the Federal Rules of Civil Procedure are involved. Amendment and Rules are attached in Appendix B.

STATEMENT OF THE CASE

On October 17, 1977, the United States of North America filed condemnation proceedings in the United States District Court, Western District of Louisiana, Lafayette Division. In their caption of this proceeding they state this land is "situate in Iberia Parish". This proceeding was to seize 429.83 acres of land on Grand Cote, now known as Weeks Island, for the storage of oil in the salt cavity therein. This is for the Federal Energy Administration Strategic Petroleum Reserve Facility. This is a civil action.

The Federal Government deposited thirty million dollars into court and seized the land. The Court paid this money over to Morton-Norwich Products, Inc.. C. Patout Burguieres received no just compensation for his interest in

this land seized by the Government.

C. Patout Burguieres has taken the position that this land is part of Cypremort Plantation; that when plotted according to the United States system of surveying, it is located in Section 31, Township 14 South, Range 7 East; that it lies in St. Mary Parish and is not located in Iberia Parish as stated in the caption of this action; that the U. S. Corps of Engineers have filed a contracted-out survey which does not bear the seal of the surveyor as required by Louisiana law, Act 73 of 1950, for the protection of its citizens; and that he has personal ownership in the lands of Cypremort Plantation as a result of the judgment of the Supreme Court of Louisiana shown in 104 La. Reports 46, 48, 49, 52, Succession of Jules M. Burguieres, 1900-01.

Morton-Norwich Products, Inc., Shell

Oil Company, and Benjamin Minerals, Inc., Et Al. are defendants in these condemnation proceedings, and will be referred to as M-S-B. C. Patout Burguieres is also a defendant and will be referred to as C. P. B.

M-S-B made a motion for Summary Judgment against C. P. B. to exclude C. P. B. from these proceedings. M-S-B claimed as "Movers" that they owned the land, and mineral rights; they asked as "Movers" that C. P. B. be dismissed with prejudice. Black's Legal Dictionary does not show a definition of the word "Mover". M-S-B in their motion claimed that the "sole basis" for C. P. B.'s claim to Grand Cote or Weeks Island was that C. P. B.'s father bought an "undivided one-fourth of one-half interest in" Grand Cote (Weeks Island) on November 19, 1881, from the succession of Alfred C. Weeks, through

William F. Weeks, Administrator of said Estate, which M-S-B acknowledges as per their Exhibit M-S-B No. 1.

M-S-B as "Movers" claim that this same "undivided one-fourth of one-half interest" was sold by C. P. B.'s father on the same day he purchased it, November 19, 1881, back to the same man he bought it from, William F. Weeks. M-S-B as "Movers" supported this claim by presenting Exhibit M-S-B No. 2a and Exhibit M-S-B No. 2b. They state that these two Exhibits are the same act, M-S-B No. 2a filed and recorded in Iberia Parish on November 21, 1881, and M-S-B No. 2b "later filed and again recorded" on June 30, 1946, in Iberia Parish.

An examination of M-S-B Exhibit No. 2b reveals a certification from St. Mary Parish Deputy Clerk of Court which states, "the above and foregoing is a true and

correct copy of the original instrument on file and of record in this office".

M-S-B claim their motion for summary judgment is based on their Exhibit M-S-B No. 1 and Exhibits M-S-B No. 2a and 2b.

The hearing for M-S-B's motion was set for September 12, 1978, a Tuesday.

C. P. B. opposed the motion for summary judgment by M-S-B and filed his written opposition with attached Exhibits "D", "E", "F", "G", and "H". Exhibit "D" is a copy of the St. Mary Parish record showing that in 1877, just four years before 1881, C. P. B.'s father bought from William F. Weeks all the lands of Cypremort Plantation, Section 31 being named, and that the vendor, "obligated himself within a reasonably short time to complete his title to that portion which is claimed by the heirs of A. C. Weeks". Conveyance Entry 13420. Conveyance acknowledged

a mortgage for the purchase of the plantation. The notary acknowledged the plantation to be in St. Mary Parish and, "the certificate of mortgage of the recorder of St. Mary Parish whereto annexed". Conveyance contained pact de no alienando. Also, "The renunciation of Mrs. Wm. F. Weeks is hereto annexed as forming part hereof".

C. P. B.'s Exhibit "E" is a copy of the mortgage his father had on Cypremort Plantation. Entry No. 17230 of the mortgage record. Final payment on said mortgage to be April 1, 1881, St. Mary Pr.

C. P. B.'s Exhibit "F" is a copy of St. Mary Parish record showing release of mortgage, Book 29, Page 468, No. 19047. Release of mortgage recorded July 11, 1883.

Four days before the hearing, on September 8, 1978, C. P. B. received a supplemental memorandum from M-S-B in support of their motion in which they state they will introduce two more exhibits at the hearing, their Exhibit M-S-B No. 3 which was the Government survey of Township 14 South, Range 6 East approved by the Surveyor General on September 20, 1849; and their Exhibit M-S-B No. 4 which was the certified copy of the Government Survey of Township 14 South. Range 7 East approved by the Surveyor General on June 16, 1948.

C. P. B. objected to this late paper received only four days before the hearing. Under Federal Rules of Civil Procedure Rule 56(b), made a motion for summary judgment against M-S-B as to all these proceedings. In his motion C. P. B. stated that M-S-B, "....are now bringing

in new points and additional exhibits and claiming they intend to talk about this at the hearing. C. P. B. objects to this late paper, its contents, and to it being allowed in this matter, and in the hearing". C. P. B. objected under the Court's local rule 10(f) and F.R.C.P. Rule 56(c) which state that ten days notice must be given. C. P. B.'s motion for summary judgment was filed on September 11, 1978, one day before the hearing of M-S-B's motion.

During oral argument on September 12, 1978, M-S-B did introduce and deposited with the Court the township plats. C. P. B. during oral argument did show the Court that Article 2251 of the Louisiana Civil Code required that as notice to third parties the original act of sale is to be deposited in the office of the parish recorder of the parish in which

the property is situated within fifteen days after act passed. C. P. B. showed the court that Art.2254 of the Louisiana Civil Code required the recorder to record each act received by him in the order in which they are received. C.P.B. deposited during oral argument a certified copy of the originals in one set of papers received from St. Mary Parish. This showed that the original act of purchase by his father of that portion from Alfred C. Weeks' succession, was deposited and recorded in St. Mary Parish as required by law. C. P. B. also showed the Court that the original of the purported act of sale (Exhibit M-S-B No. 2b) from C. P. B.'s father back to Weeks had been inserted between the pages of the Alfred C. Weeks' succession sale to C. P. B.'s father, and it bore no entry number. Only the sale to C. P. B.'s father bore an entry number

and was legally recorded.

During oral argument, C. P. B. reminded the Judge that he had filed for summary judgment against M-S-B in these proceedings. At the end of oral argument, the Judge asked C. P. B. if he could give him a judgment later. C. P. B., not being familiar with Court procedures, indicated the matter was in the Judge's hands.

The minute entry of oral argument (A-1) shows the District Court finding for "movants". M-S-B claimed to be "movers". There was only one C. P. B. who filed a counter motion for summary judgment against M-S-B and he could not be considered as more than one to be embraced by "movants" as shown in the minute entry.

C. P. B. filed a motion for a new trial as a result of the ruling contained in the minute entry. Set for hearing

October 11, 1978. Hearing denied (A-10, 11).

C. P. B. filed a disapproval of the proposed judgment shown at (A-3), and filed his own proposed judgment and opinion. C. P. B. was denied (A-11, 12).

C. P. B. filed a first amended disapproval of the proposed amended judgment shown at (A-14), and filed his own proposed amended judgment and opinion. He was denied (A-11, 12).

C. P. B. filed a motion for judgment by default with prejudice and costs against M-S-B and filed his proposed judgment thereto. Both denied (A-11).

C. P. B. filed a motion that the Court amend its amended judgment to clarify what was the Court's intent in using the word "purported" in stating in its Amended Judgment, "hereby directs that final judgment be entered, dismissing each

of C. Patout Burguieres, Sr. and J. M. Burguieres Company, Ltd. as a purported owner of an interest in Grand Cote or Weeks Island.....". Set for hearing, heard November 14, 1978, and denied.

C. P. B. made the motion that the certified copy of the record of St. Mary Parish deposited by him into this suit during his oral argument on September 12, 1978, be included in the file record of this suit before this file record is sent to the Court of Appeal. Was not done.

The Judge in the Federal District Court gave no opinion as to how or why he arrived at such final Amended Judgment.

On the very day the record of this proceeding arrived at the Federal Court of Appeal, it was examined by C. P. B. and never withdrawn from the Court as was his right. Numerous omissions and irregularities were noted in the record file. Par-

ticularly, that the plan (map) marked Schedule "C" under which the land was seized, was not in the record; and the only map in the record, marked Page 77, did not bear the seal of Pyburn and Odom who were contracted by the United States Army Corps of Engineers. C. P. B. filed a written motion asking the Federal Court of Appeal for Order to direct the District Court to put this file in order. Motion denied.

C. P. B. in his "Brief of Appellant" and "Reply Brief" filed in the Court of Appeals stated to the Court that he would like to have oral argument and oral judgment because the history of this suit is one of missing records and maps from the file of this suit. He stated by having oral argument and oral judgment it could be determined it was his brief which the Court had studied and not some other in-

strument which had been substituted, and that he had no guarantee that after a just judgment was received on summary calendar, that it would not be exchanged for something else. C. P. B. was denied oral argument and oral judgment.

On July 26, 1979, C. P. B. obtained a certified copy of the Judgment and Opinion of the Court of Appeals in this proceeding (A-29). This Judgment and Opinion are all one instrument. This Judgment affirmed the Judgment of the District Court. The Court of Appeals' Judgment is based on its Opinion. Its Opinion relied on and cited, "the official Louisiana township surveys made in 1848 and 1849 and U. S. Army Corps of Engineer's Surveys,...". In regard to these Louisiana township surveys, they are in this proceeding in violation of the Federal District Court's Local Rule 10(f) and the Federal Rules of Civil Pro-

cedure Rule 56(c)which statesten days notice must be given an opponent before oral argument in the District Court. Only four days notice was given, and C. P. B. objected. It was pointed out to the Court of Appeal that the U. S. Army Corps of Engineer's survey was contracted out to independent surveyors, that it did not bear the seal of the surveyor in accord with Louisiana law for the protection of its citizens, and therefore was not legal under Louisiana Act 73 of 1950. The Court of Appeals heedlessly cited these references as authority for its Opinion.
The Opinion of the Court of Appeals attribute a statement to C. P. B. which he did not make, and also stated he argued in a manner which he did not argue. The Judgment and Opinion of the Court of Appeals is not signed and bears a large stamp, "DO NOT PUBLISH".

Personnel of the Court of Appeals have advised C. P. B. that the Judges always sign their Opinions. C. P. B. filed two different motions at two different times to be furnished a signed copy of the Judges' Opinion in this proceeding. Both motions denied.

C. P. B. has shown the Courts that the law of Louisiana, Civil Code Articles 2251 and 2254 require depositing of original acts of sale, and the recording of same in the order received, into the office of the parish recorder in the parish where the property is located as notice to third parties.

In this instance the Courts are the third parties. M-S-B have claimed, throughout these proceedings, their rights by filings and recordings in Iberia Parish. C. P. B. has claimed his rights by depositing of originals and recording of

them in St. Mary Parish.

C. P. B. as evidence to show that the land seized is situated in St. Mary Parish has done and offered the Courts the following:

1. Objected to improper maps furnished without the seal of the surveyor as required by Louisiana Act 73 of 1950;

2. Shown the United States System of surveying Public lands;

3. Cited Louisiana Act No. 208 of 1868 which created the Parish of Iberia out of the Parishes of St. Martin and St. Mary which placed Iberia Parish to the North and Northwest of St. Mary Parish. This Act showed the Parish line following along property lines and sections and not through them; it showed that Iberia Parish would be formed, "from a portion of the North part of the parish of St. Mary" and did not state anything about running the

parish line in a Southwesterly manner as shown on the U. S. Engineers' map by Pyburn and Odom, whereby the parish line is shown cutting through the lands of Cypremort Plantation and placing these lands into two parishes which was not legislative intent; that the U. S. Engineers map showing the slanting Southwesterly line showing Grand Cote or Weeks Island to be in Iberia Parish when the Act creating Iberia Parish only states that Petite Anse Island (now Avery Island) is to be included in Iberia Parish, whilst the act does not mention anything about including Grand Cote or Weeks Island into Iberia Parish, and Grand Cote or Weeks Island is only six and three-quarter miles Southeasterly of Petite Anse Island;

4. Cited the Louisiana Supreme Court's ruling of 1882, which stated that it was not the Legislature's intent to run parish

boundary lines through the lands of property holders but that the lands of property holders would remain in one parish to avoid the paying of taxes in two parishes on the same land. See Louisiana Reports, 1882, Pg. 1233, Parish of Lafourche vs. Parish of Terrebonne;

5. Cited the Louisiana Court of Appeals suit State ex rel. Bergeron v. Robichaux, App. 1948, 33 So.2d 27, which re-stated the rulings held in Lafourche vs. Parish of Terrebonne, above.

6. Showed that Mrs. Jocelyn Gurrisco, attorney for the United States Corps of Engineers, said she could not find a chain of title in Iberia Parish.

7. Showed the Court that the caption of these proceedings indicated the land to be situated in Iberia Parish whereas the land is located in St. Mary Parish. Said

caption being in violation of the Federal Rules of Civil Procedure Rule 71A(c)(1) which requires that the location be shown in the caption.

8. That there is no such company named J. M. Burguieres Company, Ltd.

BASIS FOR FEDERAL JURISDICTION
IN THE COURT OF FIRST INSTANCE

"Whenever lands in a State are needed for a public purpose, Congress may authorize that they be taken, either by proceedings in the courts of the State, with its consent, or by proceedings in the courts of the United States, with or without any consent or concurrent act of the State." Chappell v. United States, 160 U. S. 499, 510 (1896).

REASONS FOR GRANTING THE WRIT

C. P. B. has been deprived of his property without due process of law and without just compensation under the Fifth Amendment because the Trial Court did not give an opinion with its judgment; also, because the Appeals Court, in affirming the judgment of the Trial Court, based its opinion on township plats entered herein untimely and without proper notice.

"The words "decision" and "opinion" do not have same meaning, a "decision" of a court being its judgment, and its "opinion" being reasons given for judgment. Robertson v. Vandergrift, 119 W. Va. 219, 193 S.E. 62, 63; In re Brown's Guardianship, 6 Wash.2d 215, 107 P.2d 1104, 1106, 1107, 1108; Mosley v. Magnolia Petroleum Co., 45 N. M. 230, 114 P.2d 740, 747" from Black's Legal Dictionary under "Opinion".

"Where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue." Greene v. McElroy, 360 U.S. 474, 496 (1959), quoted with approval in Goldberg v. Kelly, 397 U. S. 254, 270 (1970).

"Regarding the Decision on the Record:

"The decisionmaker's conclusion....must rest solely on the legal rules and evidence adduced at the hearing....To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on....though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law." Goldberg v. Kelly, 397 U. S. 254, 270 (1970).

The trial court in these proceedings did not state its "reasons for his determination and indicate the evidence he relied on" as shown above.

In the proceeding Bass v. Hoagland, which the United States Supreme Court denied a writ of certiorari, the United States Court of Appeals, Fifth Circuit, (the same Court of these proceedings) held

that, "We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void, and attackable collaterally by habeas corpus if for crime, or by resistance to its enforcement if a civil judgment for money, because the United States is forbidden by the fundamental law to take either life, liberty, or property without due process of law, and its courts are included in this prohibition." Bass v. Hoagland, 172 F. 2d 205, 209, C. A. Tex. 1949, certiorari denied 70 S.Ct. 57, 338 U. S. 816, 94 L.Ed.494.

"due process" in condemnation matters being synonymous with "just compensation". In re Condemnation of Lots Nos. 2, 27, 803, etc., in Square 3960, D.C.D.C. 1945, 58 F. Supp. 832, 833, 834.

In the light of the foregoing court jurisprudence, C. P. B. takes the position

that he has been deprived of due process of law due to the failure of the trial court to show why and how it formed its judgment. C. P. B. takes the position that the trial court's judgment is void and he fails to see how the Court of Appeals can affirm a void judgment.

C. P. B. further states he has been deprived of due process of law and just compensation by the Courtof Appeals' opinion and judgment which are based on township plats filed untimely and without proper notice in time, to which, C. P. B. objected. C. P. B. cites the following: "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to

present their objections." Mullane v. Central Hanover Trust Co., 339 U. S. 306, 313 (1950).

"When a benefit is to be administratively terminated, beneficiaries must be given notice which details the reasons for the proposed termination and affords them suitable opportunity to prepare for a hearing." Goldberg v. Kelly, 397 U. S. 254, 267-268 (1970).

"There must rather be notice in time for the wage earner to contest the proposed garnishment in advance". Sniadach v. Family Finance Corp., 395 U. S. 337 (1969).

In these proceedings, C. P. B. received a memorandum only four days before the hearing which stated the township plats would be entered at the time of hearing. Federal Rules of Civil Procedure, Rule 56(c) require ten days notice.

CONCLUSION

The Federal Government has come in and seized C. P. B.'s personal property for public use without due process of law and without paying him just compensation. The Federal Government has come in with a wrongful caption in these proceedings and wrongful maps. The Federal Government has cut down large magnolia trees and other trees and carved the hilly earth to make a working surface, has drilled "two fill holes" and one "vent hole" for the storage of oil. The United States District Court and the United States Court of Appeals have clearly violated the due process clause and the payment of just compensation to C. P. B. under the Fifth Amendment to the Constitution of the United States; the United States District Court by failing to render an opinion; the United States Court of Appeals, Fifth

Circuit, by affirming a void judgment and by basing its Opinion and Judgment on exhibits untimely filed and without proper notice.

For the foregoing reasons, C. P. B. respectfully requests that this petition for a writ of certiorari be granted.

October 7, 1979.

C. Patout Burguieres

C. PATQUT BURGUIERES, IN PROPER PERSON
1553 CALHOUN STREET
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(504) 897-0420

APPENDIX A

DISTRICT COURT MINUTE ENTRY

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, LAFAYETTE DIVISION

UNITED STATES OF AMERICA, Plaintiff

VS. CIVIL ACTION NO. 7711149

429.83 ACRES OF LAND, MORE OR LESS, SITUATE IN IBERIA PARISH, STATE OF LOUISIANA, AND MORTON-NORWICH PRODUCTS., ET AL

- -

MINUTE ENTRY

This matter came on for hearing on motion of Morton-Norwich Products, Inc., Shell Oil Company and Benjamin Mineral, Inc., the Royalty Trusts and Mineral Owners, for summary judgment and the court after considering the record, affidavits, letters and other documents filed by C. Patout Burguieres finds for movants and renders judgment granting said motion.

The attorney representing movants shall forthwith prepare and forward for

signature a formal decree in conformity with Rule 54(b) F.R.C.P., in keeping herewith. Judgment shall not be entered by the Clerk until such decree has been signed and filed.

Lafayette, Louisiana, September 12, 1978.

BY DIRECTION OF THE COURT

ROBERT H. SHEMWELL, CLERK

BY: s/ Janella F. Pitre
Deputy Clerk

APPENDIX A

DISTRICT COURT JUDGMENT (BEFORE AMENDED)

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, LAFAYETTE DIVISION

UNITED STATES OF AMERICA, Plaintiff

VS. CIVIL ACTION NO. 771149

429.83 ACRES, MORE OR LESS, SITUATED IN IBERIA PARISH, STATE OF LOUISIANA, AND MORTON-NORWICH PRODUCTS, INC., ET AL., AND UNKNOWN OWNERS, Defendants

JUDGMENT

A motion by Morton-Norwich Products, Inc., Shell Oil Company, Benjamin Minerals, Inc., the "ROYALTY TRUSTS" (hereinafter defined) and "MINERAL OWNERS" (hereinafter defined), for summary judgment against C. Patout Burguieres, Sr. and the J. M. Burguieres Company, Ltd., came on to be heard on 12 September 1978, pursuant to notice, and the Court having considered the record, affidavits, letters and other documents filed by Movers and by C. Patout Burguieres, Sr. and the

absence of opposition by J. M. Burguieres Company, Ltd., made an order pursuant thereto granting the said Mover' motion and directing that judgment be entered herein in said Movers' favor with costs and disbursements, it is hereby

ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of Morton-Norwich Products, Inc., Shell Oil Company, Benjamin Minerals, Inc.; Whitney National Bank of New Orleans, Trustee for John Durland Benjamin, Ann Merril Benjamin, Mary Dabney Benjamin, Edward Wisdom Benjamin, Thomas Mente Benjamin, William Proctor Benjamin, Ann Leith Benjamin, Leisabeth Ryden Benjamin A/K/A Elisabeth Ryden Benjamin, Stuart Minor Benjamin, The John D. Benjamin Revocable Trust, Jacob Lemann, Jr. and Mary Lemann under the Lucy Benjamin Lemann Trust, George Andrew Holmes Benjamin, as successor in

interest to Whitney National Bank of New Orleans, Trustee for George Andrew Holmes Benjamin and Emelia Jane Benjamin, as successor in interest to Whitney National Bank of New Orleans, Trustee for Emelia Jane Benjamin (collectively called "ROYALTY TRUSTS"); and, Blanche Sternberger A/K/A Blanche S. Benjamin, individually and as Provisional Curatrix for Edward Bernard Benjamin A/K/A E. B. Benjamin A/K/A Edward B. Benjamin, Emanuel Victor Benjamin, Jr., A/K/A E. V. Benjamin, Jr., W. Mente Benjamin A/K/A W. C. Mente Benjamin, Joyce Holmes Benjamin, Jonathan Sternberger Benjamin, Jacob Lemann, Jr., individually and as heir and legatee of Solene Hazel Benjamin A/K/A Solene Benjamin Lemann, divorced wife of Jacob Lemann A/K/A Lucey B. Lemann, and Mary Lemann, individually and as heir and legatee of Solene Hazel Benjamin A/K/A Solene

Benjamin Lemann, divorced wife of Jacob Lemann A/K/A Lucy B. Lemann, Edward B. Benjamin, Jr., Adelaide Wisdom, Emanuel V. Benjamin, III A/K/A Emanuel Victor Benjamin, III A/K/A E. V. Benjamin, III, individually and as (a) heir and legatee of Florence Frederica Spandow Benjamin A/K/A Florence Spandow Benjamin A/K/A Florence Frederica Spandow, and (b) successor in interest to the Hibernia National Bank, Trustee for Emanuel Victor Benjamin, III, Sherrill Herring Benjamin, and Sigler & Company, individually and as successor in interest to E. E. Ogg (collectively called "MINERAL OWNERS") dismissing each of C. Patout Burguieres, Sr. and J. M. Burguieres Company, Ltd. as a purported owner of an interest in Grand Cote or Weeks Island, with costs and disbursements to be taxed by the Clerk in favor of Movers and against cross claimant,

C. Patout Burguieres, Sr.

Lafayette, Louisiana, this 25th day of September, 1978

s/ R. J. Putnam
UNITED STATES DISTRICT JUDGE

Entered September 27, 1978

APPENDIX A

DISTRICT COURT RULING ON THE MOTION

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, LAFAYETTE DIVISION

UNITED STATES OF AMERICA, Plaintiff

versus CIVIL ACTION NO. 771149

429.83 ACRES, MORE OR LESS, SITUATED IN IBERIA PARISH, STATE OF LOUISIANA, AND MORTON-NORWICH PRODUCTS, INC., ET AL, AND UNKNOWN OWNERS, Defendants

RULING ON MOTION

In this case, after oral argument on September 12, 1978, we rendered judgment in favor of Morton-Norwich Products, Inc., et al, granting their motion for summary judgment on September 12. Subsequently we receive a form of judgment from movants' attorney which was signed and formally entered on September 25.

Meanwhile, the only active opponent to the Morton-Norwich group had himself filed a motion for summary judgment on

on September 11, which was noticed by the Clerk of Court's office for hearing on October 11, our next regular motion day, on the same date. Following receipt of the minute order rendering judgment in favor of the Morton-Norwich group as mentioned above, Mr. Burguieres and the Morton-Norwich group filed a series of motions, viz.:

(a) Motion for a New Trial, filed September 22, 1978, by Mr. Burguieres;

(b) Disapproval of the proposed judgment, filed September 26, 1978, by Mr. Burguieres;

(c) Motion to Amend the judgment of September 25, by Morton-Norwich, to Conform to Rule 54(b) filed September 29, 1978;

(d) Disapproval of the proposed amended judgment, filed October 3, 1978, by Mr. Burguieres;

(e) Motion for a default on his original motion for summary judgment, by Mr. Burguieres, filed October 3, 1978; and

(f) A proposed order filed October 3, 1978, by Morton-Norwich, to dispose of all motions.

On September 29, the court directed the Clerk to forward the record for consideration of all motions then pending. We determined that oral argument would not be required.

Mr. Burguieres does not fully understand docketing and filing procedures, and we certainly do not fault him for this. When he filed his motion for summary judgment on September 11, it was too late to be considered by the court at the hearing on September 12. When we granted the motion by the Morton-Norwich group, this effectively terminated the motion for summary judgment in favor of Mr. Burgui-

eres. There is no need for the hearing on October 11, which is hereby upset, and, if more explicitness is needed, said motion for summary judgment is hereby dismissed, and the later motion, filed October 3, 1978, for default for failure to answer thereto is also denied.

Mr. Burguieres also filed written objections to the proposed judgment submitted by Morton-Norwich, and a prepared judgment of his own in which the court reverses its previous ruling and grants summary judgment in his favor. Then, when the Morton-Norwich group moved to amend the formal judgment to provide for its finality pursuant to Rule 54(b), Mr. Burguieres again filed objection to the proposed amended judgment, and his own proposed decree. Mr. Burguieres again does not understand the purport of our Local Rule 27B. It applies to cases where

there is a trial on the facts without a jury, not to cases decided on the record as on summary judgment.

The objections of Mr. Burguieres are considered without merit, and are overruled, and his motion for a new trial is denied. The court is convinced that the uncontested facts in this phase of the litigation require such a ruling. We agree that it should be made final and appealable pursuant to Rule 54(b).

We have considered the form and substance of the orders submitted by counsel for the Morton-Norwich Group to deny the motion for summary judgment filed by Mr. Burguieres and the motion for a new trial, and also to amend the original judgment pursuant to Rule 54(b). We find these forms to be adequate and proper and they will be signed and judgment entered accordingly. Mr. Burguieres has his remedy

by appeal, which he may now proceed to perfect. Only in this manner will this case be finally terminated.

Lafayette, Louisiana, October 4, 1978.

s/ R. J. Putnam
SENIOR U. S. DISTRICT JUDGE

Entered October 5, 1978

APPENDIX A

DISTRICT COURT AMENDED JUDGMENT

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, LAFAYETTE DIVISION

UNITED STATES OF AMERICA, Plaintiff

VS. CIVIL ACTION NO. 771149

429,83 ACRES OF LAND, MORE OR LESS, SITUATED IN IBERIA PARISH, STATE OF LOUISIANA, AND MORTON-NORWICH PRODUCTS, INC., ET AL., AND UNKNOWN OWNERS, Defendants

AMENDED JUDGMENT

A motion by Morton-Norwich Products, Inc., Shell Oil Company, Benjamin Minerals, Inc., the "ROYALTY TRUSTS" (hereinafter defined) and "MINERAL OWNERS" (hereinafter defined), for summary judgment against C. Patout Burguieres, Sr. and the J. M. Burguieres Company, Ltd., came on to be heard on 12 September 1978, pursuant to notice, and the Court having considered the record, affidavits, letters and other documents filed by Movers and by C. Patout Burguieres, Sr. and the absence of oppo-

sition by J. M. Burguieres Company, Ltd., made an order pursuant thereto granting the said Movers' motion and directing that judgment be entered herein in said Movers' favor with costs and disbursements, it is hereby

ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of Morton-Norwich Products, Inc., Shell Oil Company, Benjamin Minerals, Inc.; Whitney National Bank of New Orleans, Trustee for John Durland Benjamin, Ann Merrill Benjamin, Mary Dabney Benjamin, Edward Wisdom Benjamin, Thomas Mente Benjamin, William Proctor Benjamin, Ann Leith Benjamin, Leisabeth Ryden Benjamin A/K/A Elisabeth Ryden Benjamin, Stuart Minor Benjamin, The John D. Benjamin Revocable Trust, Jacob Lemann, Jr. and Mary Lemann under the Lucy Benjamin Lemann Trust, George Andrew Holmes Benjamin, as

successor in interest to Whitney National Bank of New Orleans, Trustee for George Andrew Holmes Benjamin, and Emelia Jane Benjamin, as successor in interest to Whitney National Bank of New Orleans, Trustee for Emelia Jane Benjamin (collectively called "ROYALTY TRUSTS"); and, Blanche Sternberger A/K/A Blanche S. Benjamin, individually and as Provisional Curatrix for Edward Bernard Benjamin A/K/A E. B. Benjamin A/K/A Edward B. Benjamin, Emanuel Victor Benjamin, Jr., A/K/A E. V. Benjamin, Jr., W. Mente Benjamin, A/K/A W. C. Mente Benjamin, Joyce Holmes Benjamin, Jonathan Sternberger Benjamin, Jacob Lemann, Jr., individually and as heir and legatee of Solene Hazel Benjamin A/K/A Solene Benjamin Lemann, divorced wife of Jacob Lemann A/K/A Lucy B. Lemann, and Mary Lemann, individually and as heir and legatee of Solene Hazel Benjamin A/K/A Solene Benjamin Lemann,

divorced wife of Jacob Lemann A/K/A Lucy B. Lemann, Edward B. Benjamin, Jr., Adelaide Wisdom, Emanuel V. Benjamin, III A/K/A Emanuel Benjamin, III A/K/A Emanuel Victor Benjamin, III A/K/A E. V. Benjamin, III, individually and as (a) heir and legatee of Florence Frederica Spandow Benjamin A/K/A Florence Spandow Benjamin A/K/A Florence Spandow Benjamin A/K/A Florence Frederica Spandow, and (b) successor in interest to the Hibernia National Bank, Trustee for Emanuel Victor Benjamin, III, Sherrill Herring Benjamin, and Sigler & Company, individually and as successor in interest to E. E. Ogg (collectively called "MINERAL OWNERS") and the Court, expressly determining there is no just reason for delay in entering this final judgment against C. Patout Burguieres, Sr., and J. M. Burguieres Company, Ltd., hereby directs that final judgment

be entered, dismissing each of C. Patout Burguieres, Sr. and J. M. Burguieres Company, Ltd. as a purported owner of an interest in Grand Cote or Weeks Island, with costs and disbursements to be taxed by the Clerk in favor of Movers and against cross claimant, C. Patout Burguieres, Sr.

Lafayette, Louisiana, this 4th day of October, 1978.

s/ R. J. PUTNAM
UNITED STATES DISTRICT JUDGE

Entered October 5, 1978

APPENDIX A

DISTRICT COURT ORDER

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIAIANA, LAFAYETTE DIVISION

UNITED STATES OF AMERICA, Plaintiff

VS. CIVIL ACTION NO. 771149

429.83 ACRES, MORE OR LESS, SITUATED IN IBERIA PARISH, STATE OF LOUISIANA, AND MORTON-NORWICH PRODUCTS, INC., ET AL., AND UNKNOWN OWNERS, Defendants

ORDER

C. Patout Burguieres, Sr., having filed a "MOTION FOR SUMMARY JUDGMENT AND REASON THEREFOR" with a certificate of service date September 9, 1978, and C. Patout Burguieres, Sr. also having filed a "MOTION FOR NEW TRIAL BY C. PATOUT BURGUIERES, SR. AS A RESULT OF THE RULING CONTAINED IN THE MINUTE ENTRY BY JUDGE PUTNAM IN FAVOR OF THE MOVERS MORTON-NORWICH PRODUCTS, INC., SHELL OIL COMPANY, AND BENJAMIN MINERALS, INC., FOR SUMMARY JUDGMENT", with certificate of service

dated 21st day of September, 1978, and the Court having considered said motions of Mr. Burguieres, the pleadings, memorandum, exhibits and arguments by all parties hereto, as in the record and as heard by the Court on September 12, 1978, and also having considered the Judgment, as amended, rendered herein, it is hereby

ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment filed by C. Patout Burguieres, Sr. be denied and the Court having expressly determined that there being no just reason for delay of entry of a final judgment, hereby directs the Clerk to enter this Order as a final judgment; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the "MOTION FOR NEW TRIAL BY C. PATOUT BURGUIERES, SR. AS A RESULT OF THE RULING CONTAINED IN THE MINUTE ENTRY BY JUDGE PUTNAM IN FAVOR OF THE

MOVERS MORTON-NORWICH PRODUCTS, INC., SHELL OIL COMPANY, AND BENJAMIN MINERALS, INC., FOR SUMMARY JUDGMENT" be and hereby is, Denied.

Lafayette, Louisiana, this 4th day of October, 1978.

s/ R. J. Putnam
UNITED STATES DISTRICT JUDGE

Entered October 5, 1978

APPENDIX A

DISTRICT COURT APPROVED MOTION TO GRANT PARTIAL RELIEF FROM JUDGMENT AGAINST J. M. BURGUIERES COMPANY, LTD., AND

DISTRICT COURT ORDER APPROVING ABOVE

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, LAFAYETTE DIVISION

UNITED STATES OF AMERICA, Plaintiff

vs. CIVIL ACTION NO. 771149

429.83 ACRES OF LAND, MORE OR LESS, SITUATED IN IBERIA PARISH, STATE OF LOUISIANA, AND MORTON-NORWICH PRODUCTS, INC., ET AL., AND UNKNOWN OWNERES, Defendants

MOTION TO GRANT PARTIAL RELIEF FROM JUDGMENT AGAINST J. M. BURGUIERES COMPANY, LTD.

MORTON-NORWICH PRODUCTS, INC., SHELL OIL COMPANY, BENJAMIN MINERALS, INC. and the ROYALTY TRUSTS And MINERAL OWNERS (the latter two as defined in the Answer of Benjamin Minerals, Inc., et al, filed herein on April 17, 1978), move the Court to modify the final judgment entered herein against J. M. Burguieres Company, Ltd. ("Burguieres Co.") on September 27, 1978, as amended by the Amended Judgment entered

herein on October 5, 1978 (the "Judgment"), insofar as said Judgment may be construed not to recognize the rights of the J. M. Burguieres Company, Ltd. in a certain irregular tract of land containing 16.518 acres, a portion of which may be located on Grand Cote Island or Weeks Island (but not on land involved in these proceedings) on the following grounds and for the following reasons, to-wit:

1.

These proceedings involve the expropriation of a portion of Grand Cote Island or Weeks Island for the establishment, management and maintenance of the Strategic Petroleum Reserve of the United States as authorized by the Act of Congress approved December 22, 1975, Public Law 94-163, 89 Stat. 781, 42 U. S. Code 6281.

2.

Other portions of Grand Cote Island or Weeks Island are not involved in these proceedings.

3.

The Judgment, entered on motion of the present Movers, dismissed the Burguieres Co. as having no interest in Grand Cote Island or Weeks Island.

4.

Said dismissal of the Burguieres Co. was too broadly stated; the dismissal as to the entirety of Grand Cote Island or Weeks Island was entered by inadvertence, due to the fact that Movers have discovered that the Burguieres Co. does have an interest in a certain irregular tract of 16.518 acres, a portion of which may be located on Grand Cote Island or Weeks Island but in no event on the part involved in these proceedings, by virtue of an Agreement of Compromise between Benjamin

Minerals, Inc., et al and J. M. Burguieres Company, Ltd., one counterpart of which was recorded in C.O.B. 193, folio 434, Entry No. 80723, Iberia Parish, Louisiana.

5.

The Judgment should be modified under Rule 60 of the Federal Rules of Civil Procedure to prevent the above mentioned inadvertence from being interpreted so as to work an injustice against the Burguieres Co. insofar as concerns the 16.518 acre tract.

REQUEST FOR RELIEF

In view of the foregoing, Movers urge the Court to entertain this motion and to modify the Summary Judgment entered herein on October 5, 1978, so as to dismiss J. M. Burguieres Company, Ltd. from this action without predjudice to the rights of any of the parties, insofar as concerns the 16.518 acre tract described in the Agreement of

Compromise between Benjamin Minerals, Inc., et al and J. M. Burguieres Company, Ltd., one counterpart of which was recorded in C.O.B. 193, folio 434, Entry No. 80723, Iberia Parish, Louisiana.

MORTON-NORWICH PRODUCTS, INC.

s/By: Harry McCall, Jr.
One of its Attorneys

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s/By: Charles A. Snyder
Attorneys for Benjamin Minerals, Inc., et al

OF COUNSEL:

MILLING, BENSON, WOODWARD,
HILLYER, PIERSON & MILLER

APPROVED:

J. M. BURGUIERES COMPANY, LTD.

s/ By Edw Burguieres, Pres

ORDER

The foregoing Motion to Grant Partial Relief from Judgment Against J. M. Burguieres Company, Ltd. and the approval of said Company being considered,

IT IS ORDERED that the Summary Judgment entered herein on September 27, 1978 as amended by Amended Judgment entered herein on October 5, 1978 be ~~corrected and~~ ("corrected and" as x'd out in file of this action) modified so as to dismiss J. M. Burguieres Company, Ltd. from this

action without prejudice to the rights of any of the parties insofar as concerns the 16.518 acre tract described in the Agreement of Compromise between Benjamin Minerals, Inc., et al and J. M. Burguieres Company, Ltd., one counterpart of which was recorded in C. O. B. 193, folio 434, Entry No. 80723, Iberia Parish, Louisiana.

Lafayette, Louisiana, December 7th, 1978.

s/ R. J. Putnam
UNITED STATES DISTRICT JUDGE

Entered December 13, 1978

APPENDIX A

APPEALS COURT JUDGMENT AND OPINION

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 78-3646
SUMMARY CALENDAR*

UNITED STATES OF AMERICA, Plaintiff

V.

429.83 ACRES OF LAND, MORE OR LESS, SITUATED IN IBERIA PARISH, STATE OF LOUISIANA, AND MORTON-NORWICH PRODUCTS, INC., ET AL., AND UNKNOWN OWNERS, Defendants,

MORTON-NORWICH PRODUCTS, INC., SHELL OIL COMPANY AND BENJAMIN MINERALS, INC., ET AL., Defendants-Appellees,

V.

C. PATOUT BURGUIERES, Defendant-Appellant.

Appeal from the United States District Court for the Western District of Louisiana

(JULY 24, 1979)

Before CLARK, GEE and HILL, Circuit Judges.

PER CURIAM:

This appeal arises from a determina-

*Rule 18, 5 Cir.; see Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

tion of ownership by the district court of a certain tract of land knows as Weeks Island, formerly Grand Cote Island, Louisiana, which is part of a federal condemnation proceeding. The interest claimed by C. Patout Burguieres, the appellant, was challenged by Morton-Norwich Products, Inc., Shell Oil Co., and Benjamin Minerals, Inc. After oral argument the district court granted summary judgment for the three companies and finalized the judgment for appeal in accordance with Fed. R. Civ. P. 54(b). Finding that no genuine issue as to any material fact existed, we affirm.

The records introduced in the district court establish that Burguieres' father, Jules M. Burguieres, purchased a large tract of land known as Cypremort Plantation from William F. Weeks in 1877. The deed recited the surveyor's description

of the property and specified the sale to be per aversionam,

> in consequence said vendor sells all the lands forming part of the said Cypremort Plantation comprising all the lands belonging to him, and forming a part of said place in sections 20, 21, 28, 44, 31, 32, 33 in T 14 S, R 7 East and all the lands in sections 2, 3, 4 of Township 15, South of Range 7 East whether included in the lines of said surveys or descriptions or not and whether it contains the said number of acres or not provided it be in said sections and form a part of said plantation.

Weeks reserved certain specific acreaage and a right-of-way through the plantation from Grand Cote Island to the Cypremort Bayou and obligated himself within a reasonably short time to complete his

title to the portion of the estate claimed by the heirs of one A. C. Weeks. A portion of the purchase price was to be paid in four yearly installments under a pact de non alienando which bound Burgulieres not to alienate the property until after satisfaction of the mortgage.

In 1881, William F. Weeks, administrator of Alfred C. Weeks, conveyed to Jules M. Burgulieres at public auction a one-eighth interest in Grand Cote Island and by separate description a one-eighth interest in Cypremort Plantation and a tract of land between Cypremort Plantation and Grand Cote Island. By instrument dated the same day, recorded in Iberia Parish, Louisiana, Jules M. Burguieres conveyed to William F. Weeks the one-eighth interest he had acquired in Grand Cote Island, retaining the one-eighth interest in Cypremort Plantation

and the tract located between the two.

C. Patout Burguieres advances several arguments which he contends present genuine issues of material fact requiring reversal of the summary judgment. First he claims that the original per aversionam 1877 sale of Cypremort Plata-tion to his father conveyed Grand Cote Island as well. The district Court had before it both the official Louisiana township surveys made in 1848 and 1849 and U. S. Army Corps of Engineer's surveys clearly showing the island to be comprised entirely of Sections 37, 38, 39, 40, 42, 43 and 44 of Township 14 South, Range 6 East, and Sections 46, 47, 48, and 49 of Township 14 South, Range 7 East. By its terms the 1877 deed conveyed no part of these sections to Burguieres' ancestor. Burguieres argues, however, that the official Louisiana surveys are wrong and

that Grand Cote Island should be located in Section 31, Township 14 South, Range 7 East, one of the sections included in the 1877 deed. Yet, these are the same official surveys which the parties to the deed used to describe the property incorporated. Cragin v. Powell, 128 U. S.691, 9 S. Ct. 203, 32 L.Ed. 566 (1888). Thus, assuming the surveys were wrong, changing the surveys now would avail Burguieres nothing. The intent of the parities to the 1877 deed would still have to be derived by reference to the surveys as they then existed.

Burguieres also challenges the validity of the 1881 sale of one-eighth interest in the island from his father to William Weeks on the grounds that it was not properly recorded and violated the pact de non alienando contained in the 1877 deed. Neither of these contentions, even if true,

would void the sale. Richmond v. Zapata Development Corp., 350 So. 2d 875 (La. 1977); Shields v. Shiff, 124 U. S. 351, 85 S.CT. 510,_____L.Ed._____(1888). We find Burguieres' arguments to be without merit.

AFFIRMED

Entered July 24, 1979

Not recorded

A true copy 78-3646
Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Cir.
By Sally Hayward
Deputy
New Orleans, Louisiana Jul 26 1979

APPENDIX B

The Fifth Amendment to the Constitution of the united States of America, quoted from Document No. 92-82, U. S. Government Printing Office, Washington, D. C..

FIFTH AMENDMENT, Pg. 1089

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public

use, without just compensation.

FEDERAL RULES OF CIVIL PROCEDURE:

Rule 56. SUMMARY JUDGMENT

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

FEDERAL RULES OF CIVIL PROCEDURE:

Rule 71A. CONDEMNATION OF PROPERTY.

(c)(1) Caption. The complaint shall contain a caption as provided in rule 10(a), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

Rule 56. SUMMARY JUDGMENT

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

Supreme Court, U. S.
FILED
NOV 10

In the
Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-625

UNITED STATES OF AMERICA,
Plaintiff,

versus

429.83 ACRES OF LAND, MORE OR LESS, SITUATED IN IBERIA PARISH, STATE OF LOUISIANA, AND MORTON-NORWICH PRODUCTS, INC., ET AL, AND UNKNOWN OWNERS,
Defendants.

MORTON-NORWICH PRODUCTS, INC., SHELL OIL COMPANY AND BENJAMIN MINERALS, INC., ET AL
Defendants-Respondents,

versus

C. PATOUT BURGUIERES
Defendant-Petitioner.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-625

UNITED STATES OF AMERICA,
Plaintiff,

versus

429.83 ACRES OF LAND, MORE OR LESS, SITUATED IN IBERIA PARISH, STATE OF LOUISIANA, AND MORTON-NORWICH PRODUCTS, INC., ET AL, AND UNKNOWN OWNERS,
Defendants.

MORTON-NORWICH PRODUCTS, INC., SHELL OIL COMPANY AND BENJAMIN MINERALS, INC., ET AL
Defendants-Respondents,

versus

C. PATOUT BURGUIERES
Defendant-Petitioner.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS

OPINIONS BELOW

The District Court's summary judgment is unreported and is found on page 3 of the Appendix attached to the Petition for Writ of Certiorari. The District Court's amended judgment is also unreported and is found on page 14 of the Appendix to the Petition for Writ of Certiorari. The Fifth Circuit Court of Appeals' affirmance is unreported and is found on page 29 of the Appendix to the Petition for Writ of Certiorari.

QUESTIONS PRESENTED

Whether this Court should grant certiorari to review a judgment of the Fifth Circuit Court of Appeals affirming the Summary Judgment of the U.S. District Court for the Western District of Louisiana dismissing petitioner and the J.M. Burguieres Company, Ltd. as purported owners of an interest in Grand Cote or Weeks Island.

COUNTERSTATEMENT OF THE CASE

The petition hereby opposed evolves from a condemnation proceeding instituted by the United States of America to acquire certain land for storage of strategic petroleum reserve and construction of related facilities. [1] R.pp.1-77 [2].

---

1. Said proceeding was brought in the United States District Court for the Western District of Louisiana, Lafayette Division in accordance with 40 U.S.C. 258a, 33 U.S.C. 257, 89 Stat. 871, 91 State. 565, Public Law 94-303 and Public Law 94-373.

2. References (Pet ... A) are to petitioner's Appendix. References to Petitioner's Certiorari Petition are indicated as (Pet ...). "R ..." refers to the record in the Court of Appeals.

Following the filing of the Notice of Condemnation in these proceedings addressed to respondents, petitioner entered an appearance in *propria persona* in which he claimed a one-sixth interest in the land at issue. The stated basis of petitioner's claim was inheritance from his father, who was alleged to have owned the land in question.

This allegation was accompanied by contentions that there was no legal record of petitioner's father having sold this property and that the property was incorrectly located on government surveys. R.pp.247-257. [3]

Answering petitioner's filing, respondent, Morton-Norwich, denied petitioner's claim of ownership and alleged that it was the owner of the property at issue. In addition, it pleaded title by adverse possession and that petitioner's claim could only be asserted by a petitory action as provided in Article 3651 et seq. of the Louisiana Code of Civil Procedure. R.pp.266-269.

In due course, respondents moved for Summary Judgment on the grounds that petitioner's father had sold the only

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3. On May 15, 1978 Petitioner filed "Amendment and Corrections to Certain Items Contained in My Letter of April 16, 1978" wherein petitioner revised his claim to be a 1/5 interest in his mother's 1/2 interest and a 1/6 interest in his father's 1/2 interest and alleged that the property which is the subject of the condemnation is part of Cypremort Plantation which was owned by his father and is located, contrary to government surveys, in Section 31, Township 14 South, Range 7 East. R.pp.274-275.

interest acquired by him in the property at issue on the same day on which he had acquired it. Respondents attached to their motion certified copies of the acts of sale to and by petitioner's father as Exhibits MSB-1 and -2 [4].

In a supplemental memorandum in support of their motion, addressed to petitioner's contention that the government surveys incorrectly located the property in question, respondents pointed out that a government survey *creates* sections rather than merely identifying them. R.pp.350-354. [5]

In response to this motion petitioner filed an opposition in which he asserted as an additional basis for his claim that the land at issue was "part of Cypremort Plantation as bought by sections and townships by his father . . ." [6]

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4. M-S-B No. 1 is a succession sale to petitioner's father, J. M. Burguieres, of a 1/4 of 1/2 interest in Grand Cote or Weeks Island from the Estate of Alfred G. Weeks, dated November 19, 1881, recorded in Book "U" at page 341, Entry No. 14597, on November 19, 1881, of the Records of St. Mary Parish R.299). M-S-B No. 2 is a sale to William F. Weeks from Petitioner's father on November 19, 1881, filed in Conveyance Book 9 at Folio 158, of the Records of Iberia Parish, Louisiana. R 301-304).

5. This Supplemental Memorandum was filed in response to petitioner's May 15, 1978 filing of which respondents were not aware until after August 28, 1978.

6. Petitioner refers to a *per aversionem* conveyance from William Weeks to his father dated May 1, 1877 of Cypremort Plantation which was attached to Petitioner's opposition and styled "Exhibit D".

Petitioner also cited various supposed technical deficiencies in the sale to Weeks by his father of his interest in Weeks Island (M-S-B No. 2) and unaccountable, also in the sale *to* his father of Cypremort Plantation. R.pp.317-348. Petitioner also filed his own motion for Summary Judgment but did not fix it for oral argument. R.pp.356-35.

The district judge rendered judgment or respondents' motion dismissing petitioner and J.M. Burguieres Company, Ltd. [7] as purported owner of an interest in the land at issue. R.pp.390-392, which was amended on motion to conform to Rule 54 FRCP. RR.pp.403-404 and 442-444. Petitioner filed several motions directed to the judgment, all of which were denied. R.pp. 370, 375, 393, 394, 397, 406, 412 and 421-453, and appealed to the Court of Appeals for the Fifth Circuit which affirmed in a per curiam opinion. (Pet. 29A). Petitioner then filed several unusual motions in the Court of Appeal and, when they were denied, filed the instant petition.

REASONS FOR DENYING THE WRIT

This Court's Rule 19 sets out the general considerations which the court will employ in determining whether to grant writs of certiorari. It is respectfully suggested that the petition fails to reveal the applicability of any of such considerations to the instant fact situation.

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7. J.M. Burguieres Company, Ltd., the owner of Cypremort Plantation, filed no response to respondents' Motion for Summary Judgment and did not appear at the September 12 hearing in this regard.

It is true that petitioner alleges a taking of petitioner's property without due process of law and without paying him just compensation therefor. The record in the case, however, belies such an allegation. Petitioner's highly original, in *propria persona*, pleadings have been treated with seriousness and dignity by both the district court and the court of appeals. (Pet. A-8) and petitioner's rights to "due process" have been safeguarded to the point of adversely affecting the rights of other parties to a prompt resolution of this condemnation proceeding.

There is no material issue of fact in the present controversy, only a difference of opinion as to the legal interpretation of those facts and no authority exists supportive of petitioner's legal opinion.

Petitioner's father, Jules M. Burguieres, purchased a 7/8 interest in Cypremort Plantation from one William F. Weeks on May 1, 1877. The deed further described the plantation as being located in "Sections 20, 21, 28, 29, 44, 31, 32, 33 in Township 14 South, Range 7 East, and all the lands in Section 2, 3, 4 of Township 15 South, Range 7 East whether included in the lines of said surveys or descriptions or not and whether it contains the same number of acres or not *PROVIDED IT BE IN SAID SECTIONS AND FORMS A PART OF SAID PLANTATION.*" (emphasis added). In the conveyance Weeks promised to complete Burguieres' title by acquiring the 1/8 interest owned by the Succession of A.C. Weeks. (R. 322).

On November 19, 1881, William Weeks, as administrator of A.C. Week's succession, conveyed to Burguieres the Succession's 1/8 interest in Cypremort Plantation thus fulfilling the obligation which he had made on May 1, 1877. In the same conveyance, by separate description, Weeks conveyed to Burguieres the 1/8 interest the succession owned in Grand Cote Plantation, now known as Weeks Island. (R 299).

By instrument dated the same day Jules Burguieres conveyed to William Weeks, individually, the 1/8 interest in Grand Cote Plantation which he had just acquired from Weeks as administrator of A.C. Weeks' succession. (R. 301) Thus, a 1/8 interest in Grand Cote Plantation merely passed through the hands of petitioner's father and title became vested in William Weeks, by whose name, the tract of land is now known.

Being unable to deny the existence of his father's conveyance to Weeks of the 1/8 interest in Grand Cote, petitioner takes the legal position that the deed is invalid because it was not properly recorded. Assuming only for the sake of argument that petitioner is correct in his position that the conveyance was improperly recorded, Louisiana Law is quite clear that improper recordation has no effect as between the parties to a conveyance, but only as to the rights of third parties. La. Civil Code Art. 2266 (1870) *Richmond v. Zapata Development Corporation*, 350 So. 2d 875 (La. 1977). This may, in fact, be an almost universally recognized principle of law because of the obvious injustice of allowing a vendor to escape from a conveyance because his vendee failed to properly record same.

Petitioner has an equally ingenious but also equally erroneous legal argument with respect to the May 1, 1877 conveyance from William Weeks to Jules Burguieres of a 7/8 interest in Cypremort Plantation. The argument, as we understand it, is that the conveyance of Cypremort Plantation actually included Grand Cote Plantation. The fact that Grand Cote Plantation is not located on the official government surveys of the area within the sections of land described in the conveyance is countered by petitioner by simply stating that the surveys are not legally valid and also were prepared through the use of improper surveying techniques. However, as the Fifth Circuit Court of Appeals pointed out . . .

> "these are the same official surveys which the parties to the deed used to describe the property conveyed. Those surveys became a part of the deed as if expressly incorporated. *Cragin v. Powell*, 128 U.S. 691, 9 S.Ct. 203, 32 L.Ed. 566 (1888). Thus, assuming the surveys were wrong, changing the surveys now would avail Burguieres nothing. The intent of the parties to the 1877 deed would still have to be derived by reference to the surveys as they then existed." Pet. 34-A

In addition, petitioner has avoided the question as to why, if the parties actually believed that Cypremort Plantation included within its boundaries Grand Cote Plantation, they would describe it separately from Cypremort in the 1881 deed.

There is no reasonable answer to such question. In fact, there is no reasonable basis for petitioner's claim of ownership to Weeks Island. Petitioner has had his day in court. He has used to the fullest extent possible the legal system and the lower courts' interest in protecting his rights. The courts and their staffs have shown him every consideration and have spent valuable time in assisting him through every step of the federal judicial system. Petitioner has responded to such assistance by making bizarre demands and by alleging non-existent infringements of his right to due process of law. None of petitioner's rights have been infringed upon by the lower courts in this proceeding and other parties to this proceeding have the right to an expeditious conclusion thereof.

CONCLUSION

For the above stated reasons, respondents respectfully submit that the Fifth Circuit Court of Appeals was correct in finding that no genuine issue as to any material fact existed in this case and, that petitioner's legal arguments were without merit. Accordingly, the instant Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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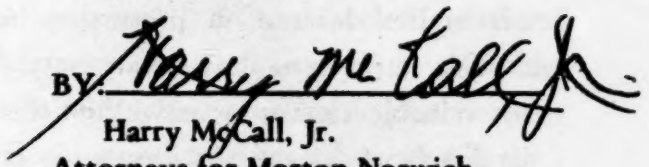
BY: 

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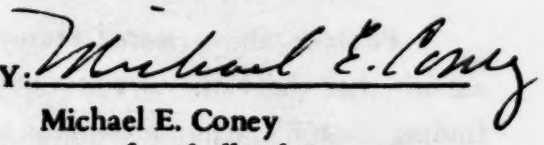
BY: 

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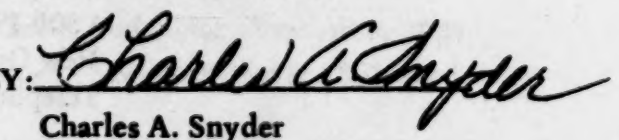
BY: 

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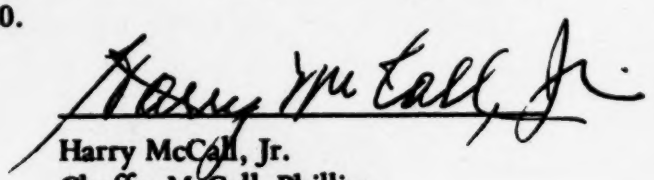
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief was mailed today, postage prepaid, to C. Patout Burguieres, Sr., at his address, 1553 Calhoun Street, New Orleans, Louisiana 70188, and Mrs. Gail Osherenko, Attorney, Land and Natural Resource Division, United States Department of Justice, Washington, D.C. 20530.



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